



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,526	07/11/2003	Frits Jacobus Fallaux	2578-3833. 9US	5055
24247	7590	03/27/2007	EXAMINER	
TRASK BRITT			PRIEBE, SCOTT DAVID	
P.O. BOX 2550				
SALT LAKE CITY, UT 84110				
			ART UNIT	PAPER NUMBER
			1633	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/27/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/618,526

Applicant(s)

FALLAUX ET AL.

Examiner

Scott D. Priebe, Ph.D.

Art Unit

1633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-7,10,11,16 and 21-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23 and 24 is/are allowed.
- 6) ☒ Claim(s) 1,3-7,10,11,16 and 21-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The provisional rejection on the ground of nonstatutory obviousness-type double patenting over application 11/070,890 is withdrawn due to the abandonment of the '890 application.

Double Patenting

Claims 1, 3-7, 10, 11, 16, 22 and claim 25 remain rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over: claims 43 and 44 of U.S. Patent No. 6,340,595 and claims 7, 32, and 35 of U.S. Patent No. 6,413,776 for the reasons of record set forth in the Office action of 8/29/05.

Applicant's arguments filed 3/2/07 have been fully considered but they are not persuasive. Applicant has indicated that the rejections would be appealed, and have provided no new arguments in the submission.

The following are provisional obviousness-type double patenting rejections because the conflicting claims have not in fact been patented.

Claims 1, 3-7, 10-11, and 25 remain provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3, 5-9, 13, 25, 27-29, and 37 (and their dependent claims) of copending Application No. **09/449,854**; over claims 1-10, 13, and 26-30 (and their dependent claims) of copending Application No. **11/271,368**; and over

Art Unit: 1633

claims 30-34 (and their dependent claims) of copending Application No. **11/450,038** for the reasons of record set forth in the Office action of 11/6/06.

Claims 1, 3-7, and 25 (and their dependent claims) remain provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 11 (and its dependent claims) of copending Application No. **11/256,352**; over claims 1 and 7-9 (and their dependent claims) of copending Application No. **10/790,562**; over claims 42, 47, 50, 51, and 58-60 (and their dependent claims) of copending Application No. **11/026,518**; over claims 1-3, 13, and 17-19 (and their dependent claims) of copending Application No. **11/280,757**; over claims 1, 13, 14, 21, and 34 (and their dependent claims) of copending Application No. **11/259,245**; over claims 42 and 43 (and their dependent claims) of copending Application No. **11/331,861**; over claims 21 and 34 (and their dependent claims) of copending Application No. **11/544,490**; over claim 27 of copending Application No. **11/018,669**; over claims 17 and 20 of copending Application No. **11/140,418**; over claim 1 (and its dependent claims) of copending Application No. **11/146,332**; and over claims 15-18 (and their dependent claims) of copending Application No. **11/386,995** for the reasons of record set forth in the Office action of 11/6/06.

Applicant has acknowledged the provisional rejections and indicated that they will be addressed when the claims are otherwise in condition for allowance. Application **09/449,854** has been allowed, and is due to issue as U.S. 7,192,759 on March 20, 2007, at which time the rejection over this application will no longer be provisional.

The terminal disclaimer filed on 3/2/07 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Pat. No. 7,132,280 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claims 1, 3-7, 10-11, and 25 are directed to an invention not patentably distinct from the specified claims of commonly assigned (or presumably commonly assigned) applications 09/449,854; 11/271,368; 11/450,038; 11/256,352; 10/237,007; 10/790,562; 11/026,518; 11/280,757; 11/259,245; 11/331,861; 11/544,490; 11/018,669; 11/140,418; 11/146,332; and 11/386,995 for the reasons indicated above. The U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP Chapter 2300). These commonly assigned (or presumably commonly assigned) applications discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(e), (f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee can, under 35 U.S.C. 103(c) and 37 CFR 1.78(c), either show that the conflicting inventions were commonly owned at the time the invention in this application was made, or name the prior inventor of the conflicting subject matter.

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. 102(f) or (g), or 35 U.S.C. 102(e) for applications pending on or after December 10, 2004.

Art Unit: 1633

Applicant has made no showing as to whether these applications were or were not commonly owned at the time the instant invention was made.

Conclusion

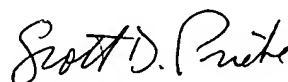
THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott D. Priebe, Ph.D. whose telephone number is (571) 272-0733. The examiner can normally be reached on M-F, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Woitach, Ph.D. can be reached on (571) 272-0739. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Scott D. Priebe, Ph.D.
Primary Examiner
Art Unit 1633